



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



North Country Environmental Services, Inc.
3 Pitkin Court
Montpelier, VT 05602

Re: Trudeau Road Landfill
Bethlehem, NH

ADMINISTRATIVE FINE
BY CONSENT

No. AF 02-006

I. Introduction

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Waste Management Division, and North Country Environmental Services, Inc., pursuant to RSA 149-M:16. This Administrative Fine by Consent is effective upon signature by all parties.

II. Parties

1. The Department of Environmental Services, Waste Management Division ("DES") is a duly constituted administrative agency of the State of New Hampshire, having its main office at 6 Hazen Drive, Concord, NH.
2. North Country Environmental Services, Inc. ("NCES") is a corporation registered to do business in New Hampshire having a mailing address of 3 Pitkin Court, Montpelier, VT 05602.

III. Background

1. RSA 149-M authorizes DES to regulate the management and disposal of solid waste. RSA 149-M:7 authorizes the Commissioner of DES to adopt rules to implement RSA 149-M. Pursuant to this authority, the Commissioner has adopted NH Admin. Rules Env-Wm 100-300 and 2100 *et seq.* ("Solid Waste Rules").
2. Pursuant to RSA 149-M:16, the Commissioner is authorized to impose administrative fines of up to \$2,000 per violation for violations of RSA 149-M and the Solid Waste Rules.
3. NCES owns and operates a landfill on Trudeau Road in Bethlehem, NH ("the Landfill"). The Landfill is subject to the requirements of RSA 149-M and the Solid Waste Rules.
4. NCES holds solid waste facility permits DES-SW-87-022 and DES-SW-89-009 for Stage I and Stage II, respectively, of the Landfill. Construction and operation approvals have been issued for Stage I and Stage II. NCES also holds solid waste facility permit DES-SW-SP-00-003 for Stage III of the Landfill. At the times relevant to this matter, DES had not yet issued operation approval for Stage III.

IV. Allegations

1. In June 2000, NCES informed DES via telephone conversation that due to diminishing capacity, it might be necessary to modify grading of the Landfill to accommodate additional waste. DES informed NCES that any change exceeding the permitted final grading plan for the Landfill would require a permit modification.
2. On or about July 14, 2000, NCES issued a letter to customers not having a contract ("Non-Contracting Customers") to inform them that as of July 19, 2000, NCES would no longer be able to accept their waste for disposal due to limited remaining capacity at the Landfill.
3. On July 18, 2000, DES received a Facility Operating Report from NCES for the month of June 2000 in which NCES stated: "at the end of June 2000, approximately 6,661 tons of available capacity remained at NCES".
4. NCES's July 14, 2001 letter caused considerable consternation among users of the Landfill and elected officials representing the region served by the Landfill. Significant concerns were voiced regarding the impact of discontinuing the receipt of waste from Non-Contracting Customers on public health, the environment, and the region's economy, especially as to municipalities which had developed solid waste disposal budgets on the premise that the wastes could be hauled to the Landfill. In view of these concerns, DES considered the minimal risk of environmental harm from allowing the Landfill to continue to accept wastes from Non-Contracting Customers prior to the issuance of the Stage III operating permit and requested NCES to continue to accept such waste at the Landfill.
5. On August 15, 2000, DES personnel conducted a site visit at the Landfill. The purpose of the site visit was to monitor construction activities associated with the development of Stage III. During the site visit, DES personnel observed that wastes were being placed on the southern side slopes of Stages I and II. Based on a visual inspection, it appeared that wastes were being placed beyond the permitted vertical limits of the Stages I and II.
6. On August 15, 2000, DES requested NCES to provide waste disposal records for the period of July 1, 2000 to present. On August 16, 2000, DES received from NCES via facsimile daily tonnage reports for the period from July 1, 2000 to August 15, 2000. The total waste received during this period was reported to be 9,735 tons.
7. On August 16, 2000, DES requested NCES to provide site survey data documenting remaining Landfill capacity and comparing the permitted vertical limits for Stages I and II to existing grades.
8. On August 17, 2000, DES received an application for a Type IB Permit Modification requesting approval for the placement of waste on the southern side slopes of Stages I and II within the previously permitted Stage III airspace (ref. WMD Log # 200000227).
9. On September 8, 2000, DES received a letter from NCES that included an analysis of remaining capacity at the Landfill and a topographic plan of the site that was developed based on

aerial photographs taken on August 4, 2000 (ref. WMD Log # 200000242). The plan provides a comparison of the permitted vertical limits of the landfill and existing grades as of August 4, 2000.

10. Volume calculations indicate that as of August 4, 2000, approximately 26,274 cubic yards of capacity remained within Stages I and II. However, the topographic plan indicates that wastes had been placed on the southern side slope of Stage II beyond the permitted vertical limits.

11. Env-Wm 2506.02(b) requires wastes to be placed “only within the permitted vertical and lateral limits” of a landfill.

V. Administrative Fine, Payment, Waiver of Hearing

1. NCES agrees to pay \$2,000 upon its execution of this Agreement in full satisfaction of any fine to which it may have been subject for placing waste outside of the permitted vertical limits of the Landfill.

2. Payment under paragraph V.1 shall be paid by certified check made payable to: “Treasurer, State of New Hampshire” and mailed to:

Attention: James Ballentine, Paralegal
DES Legal Unit
PO Box 95
Concord, NH 03302-0095

3. Due to the significant adverse impact on public health, the environment, and the economy that would have resulted from discontinuing the receipt of waste from Non-Contracting Customers, the lack of any environmental harm arising from the limited placement of wastes on the lined landfill area but outside of the permitted vertical limits of the Landfill, and the obligation of DES to protect public health and the environment by allowing the continued operation of the Landfill, DES and NCES agree that this shall not be considered in determining any potential future applicability of Env-C 209.

4. By executing this Administrative Fine by Consent, NCES waives its right to a hearing on or any appeal of the administrative fine identified in this Section V, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction if NCES fails to satisfy its obligations hereunder.

5. The effective date of this Administrative Fine by Consent will be the date on which it is signed by an authorized representative of NCES, the Director of the Waste Management Division, and the Assistant Commissioner of DES.

6. If any payment is made by check that is returned due to insufficient funds, pursuant to RSA 6:11-a DES may charge a fee in the amount of 5% of the face amount of the check or \$25, whichever is greater, plus all protest and bank fees, in addition to the amount of the check, to cover the costs of collection.

7. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this agreement on any further breach or default.

North Country Environmental Services, Inc.

COPY
By (print/type name of signor): James W. Bohly
Title: President
Duly Authorized

Date 3-15-02

Department of Environmental Services

COPY
Philip J. O'Brien, Ph.D., Director
Waste Management Division

Date 3/21/02

COPY
George Dana Bisbee, Assistant Commissioner

Date 3/1

cc: Gretchen Rule, DES Legal Unit
Bethlehem Board of Selectmen
Bill Williams